

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

MARQUIS D. DAVIS, #11299-171,

Petitioner,

v.

ACTION NO. 2:09cv131

WARDEN STANSBERRY,

Respondent.

**UNITED STATES MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION**

This matter was initiated by petition for writ of habeas corpus under 28 U.S.C. § 2241. The matter was referred to the undersigned United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia.

Petitioner Marquis Davis ("Davis") was convicted in the United States District Court for the District of South Carolina of interference with commerce by threats or violence, and was sentenced to a term of eighty four months (84) imprisonment.

Davis, presently in the custody of the Federal Bureau of Prisons at the Federal Correctional Complex ("FCC") in Petersburg, Virginia, filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 on March 24, 2009, seeking jail credit for time served from October 28, 2003 through August 29, 2004. [Doc. No. 1]. The respondent filed a Response and a Motion to Dismiss on June 16, 2009. [Doc. No. 6]. On August 14, 2009, however, Davis filed a Motion to Voluntarily Dismiss his petition. [Doc. No. 12]. In his motion, Davis stated that the sentencing judge, United

States District Court Judge Henry M. Herlong, Jr., amended Davis's judgment, granting him the jail credit in contention. The respondent did not file a motion in opposition to Davis's motion to dismiss, however, the respondent acknowledged that Davis's "sole request concerned . . . jail credit for October 27, 2003 through August 29, 2004." [Mot. Dismiss Pet. 3]. Because the sentencing court resolved the only issue addressed in Davis's petition, the Court finds the petition for a writ of habeas corpus moot.

For the foregoing reasons the Court recommends that Davis's request be GRANTED and his petition for writ of habeas corpus be DISMISSED, with prejudice, as well as the respondent's Motion to Dismiss [Doc. No. 6] and Davis's Motion for Summary Judgment [Doc. No. 9].

REVIEW PROCEDURES

By copy of this Report and Recommendation, the parties are notified that pursuant to 28 U.S.C. § 636(b)(1)(C):

1. Any party may serve upon the other party and file with the Clerk written objections to the foregoing findings and recommendations within ten (10) days from the date of mailing of this report to the objecting party, see 28 U.S.C. § 636(b)(1)(C) and Federal Rule of Civil Procedure 72(b), computed pursuant to Rule 6(a) of the Federal Rules of Civil Procedure, plus three (3) days permitted by Rule 6(e) of said rules. A party may respond to another party's objections within ten (10) days after being served with a copy thereof.

2. A district judge shall make a de novo determination of those portions of this report or specified findings or recommendations to which objection is made.

The parties are further notified that failure to file timely objections to the findings and recommendations set forth above will result in waiver of right to appeal from a judgment of this

court based on such findings and recommendations. Thomas v. Arn, 474 U.S. 140 (1985); Carr v. Hutto, 737 F.2d 433 (4th Cir. 1984); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).

/s/

Tommy E. Miller
United States Magistrate Judge

Norfolk, Virginia
October 20 , 2009

CLERK'S MAILING CERTIFICATE

A copy of the foregoing Report and Recommendation was mailed this date to the following:

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Fernando Galindo, Clerk

By 
Deputy Clerk

October 20, 2009